

# MANY NATIONS IN ONE

## A HISTORY OF FEDERAL INDIAN POLICY

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## **A History of Federal Indian Policy**

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### **INTRODUCTION**

When Christopher Columbus arrived in America in 1492, he was met by approximately 1 million inhabitants whose ancestors had arrived here over 30,000 years before.<sup>1</sup> They spoke over 200 different languages, practiced their own religions, and operated their own governmental systems. They were organized into over 400 independent nations, ranging from small nomadic bands to fairly large tribal organizations, each controlling its own territory. As Europeans began flocking to the shores of America, the Indians assisted them by sharing their food as well as their agricultural techniques. They taught these new arrivals how to build canoes, follow trails, and use herbal medicines. In return, the Indians acquired horses and rifles. The Europeans, however, also brought something else with them to this new world: disease, especially smallpox, cholera, measles, and respiratory infections. The Indians had no immunity to these diseases, and thousands died. More deaths were caused by the westward expansion of the new nation of the United States, and by the end of the 19th century, the Indian population numbered less than half a million.<sup>2</sup>

Today, the Indian population in the United States is approximately 1.7 million. Indians live in every state, although there is a very large concentration in a few states. Most of the Indians live west of the Mississippi River, but 25% live in the Northeast.<sup>3</sup> There are about 300 Indian reservations in the United States, covering 52.4 million acres. These reservations range in size from the 15.4 million-acre Navajo Reservation, located in four states, to the 1/4-acre Golden Hill Reservation in Connecticut. About one-half of the Indian population lives on or near lands reserved for them by the federal government by treaty, statute, or executive order.

Indian tribes are a unique group within American society. While they compose a minority of the United States population, the legal status of tribes, unlike African Americans or Hispanics, is not based on race. Rather, it comes from the fact that since preconstitutional times, Indian tribes have always been recognized and treated as distinct, independent political communities.

Although Indians are citizens of the United States and of the states where they reside, they are also members of a tribe and are subject to a tribal government if they reside on a reservation. State governments exercise some jurisdiction within the boundaries of an Indian reservation, but that jurisdiction is limited.

How Indian tribes attained this unique position in American society is a function of history and of federal Indian policy--a policy that has vacillated between regarding tribes as sovereign equals and attempts to

terminate tribes. Today the policy is one of tribal self-determination, but given the history of the past 200 years, there is no guarantee that this policy will persist.

The purpose of this report is to trace the development of federal Indian policy in an attempt to understand the current status of Indians and Indian tribes in the United States. Understanding the shifts in federal policy will help explain tribal skepticism of state and federal policy and programs. It will also help in understanding why Indian law is so complex and often confusing.

# CHAPTER ONE

## AGREEMENTS BETWEEN EQUALS

Colonial Times to 1820

When the Spanish conquistadors moved across Mexico and into what is now the southwestern United States, they encountered numerous Indian tribes whose lands they desired. Spanish law, however, forbade these conquerors from simply taking the land. Consent of the Indians was required before Indian lands could be legally acquired. This principle was based on three assumptions:

1. both parties to a treaty were sovereign powers;
2. Indian tribes had some form of transferable title to the land they possessed; and
3. acquisition of Indian lands was solely a matter for a government.<sup>4</sup>

Although the subsequent actions of the conquistadors and many Spanish government administrators contrasted sharply with the notion of Indian consent, those actions were in violation of existing Spanish law.<sup>5</sup> The principle of Indian consent before land acquisition was adopted by the British and ultimately by the Americans.

The British in North America dealt with the Indian tribes as foreign sovereign nations. Part of the reason for this was to seek the support of the Indian tribes in the British confrontations with the French, especially

during the French and Indian War. The Americans later sought out the Indian tribes in their revolution against the British. The Americans continued these alliances as a means of protection from foreign interference during the new nation's fragile beginnings.

Treaty making was the policy of choice of both the British and the Americans in their dealings with the various Indian tribes that inhabited this new land. Indian tribes were regarded as having the same status as foreign nations; therefore, Indian treaties were accorded the same respect as foreign treaties, with two notable exceptions: Indian treaties were always construed in favor of the Indians and Indian treaties were not abrogated by later treaties or statutes unless it was clearly shown that abrogation was specifically intended.<sup>6</sup>

From 1776 to 1789, generally known as the Confederation period in American history, the Continental Congress continued to negotiate treaties with Indian tribes. In addition, certain elements of an Indian policy were beginning to be developed: Indians came to be regarded as dependent wards of the government; lands on which to hunt and live were reserved by tribes; and Congress was recognized as the sole authority to regulate trade with Indians.<sup>7</sup> With the adoption of the Constitution in 1789, treaty making was continued. Indian affairs were placed in the hands of the central government to achieve stability and to avoid confrontations with white settlers. The newly created Congress passed numerous laws protecting Indians from non-Indians, although enforcement of these laws was spotty at best.

During this treaty making period, certain principles were developed that have continued to influence federal Indian policy to this day: Indian tribes are considered to be governments; the United States exercises broad powers over Indian affairs; matters affecting tribal self-government are generally reserved to the tribes; states have very limited jurisdiction in Indian country; the United States has a special trust obligation to Indians; and treaties and statutes must be construed to favor Indians.<sup>8</sup>

As long as the United States remained confined to 13 states on the eastern seaboard, relations with Indian tribes remained relatively peaceful. However, by 1800, the demand for territorial expansion, caused by the new nation's rapid growth, increased and Indian tribes were increasingly viewed as barriers to national growth and development.

## CHAPTER TWO

### MOVEMENT TO THE RESERVATIONS

1820 to 1871

The end of the War of 1812 brought a new sense of security to the young United States. No longer did the nation fear foreign interference, especially from Great Britain; it was now free to concentrate on internal affairs, namely westward expansion. However, expansion accelerated the friction between Indians and non-Indians as non-Indian demands for more land became more acute. In response to these demands, the federal government began negotiating treaties of cession with the tribes, but the tribes resisted the demand to cede lands by treaty. The solution for the federal government was to remove the Indians from their homelands to lands west of the Mississippi River.

In 1830, Congress passed the Indian Removal Act; removal now became a formal federal policy and the primary concern of treaty making. The act allowed President Andrew Jackson to "negotiate: with the eastern tribes for an exchange of their lands for land west of the Mississippi. Although the removal was termed voluntary, tribes were actually coerced into exchanging their lands.<sup>9</sup> During this period, over 15 tribes were removed from their homelands.<sup>10</sup>

The area to which the tribes were removed was the vast, unsettled American West. Here they joined the large number of Plains Indians whose culture was centered on hunting. The resettlement of Indians from the East resulted in their occupying vast areas of land. To non-Indians, this

area was viewed as uninhabitable and undesirable. It was semiarid, devoid of trees, and totally unsuited to eastern agriculture. But in the 1840s, settlers began crossing the Great Plains on the Oregon Trail, bound for the lush climes of the Pacific Northwest. Then, in 1849, Jacob Sutter discovered gold near his mill in the Sierra Nevada foothills, and the rush to California began.

As increasing numbers of settlers rolled their wagons across the American West, conflicts with the Indians were inevitable. In order to protect these travelers, the federal government dispatched army troops to the West. The resulting Indian wars are well documented.

By the 1850s, the federal government again altered its Indian policy to address the "Indian problem" of that era. Removal of the Indians to the open plains had not worked; the next step was to remove them to federally designated reservations.

Since colonial times, Indian policy had been to keep Indians and non-Indians separate. This separation was initially accomplished by forbidding individuals and even colonies (and, later, states) from negotiating with tribes and strictly regulating trade and association with tribes. The policy of separation evolved into removal of the Indians and eventually into segregating them onto tiny islands of land. Treaty making now became concerned with creating reservations. Most often, these reservations were located near the Indians' homelands, although in some instances, tribes were removed to far distant reservations.<sup>11</sup> No longer able to hunt buffalo, the Indians were forced to accept government

rations, thus beginning a cycle of almost total dependence on the federal government for survival.

The Fort Laramie Treaty of 1851 created two reservations in Montana for the Blackfeet and the Crow tribes. A second Fort Laramie Treaty 4 years later added the Sioux, the Assiniboiné, and the Gros Ventres to the Blackfeet Reservation. In 1888, the Blackfeet Reservation was split into three separate reservations by congressional order. These reservations were the Blackfeet, Fort Belknap, and Fort Peck. The Hell Gate Treaty of 1855 created the Flathead Reservation in northwestern Montana. The Northern Cheyenne Reservation was created by executive order in 1884. Rocky Boy's Reservation was established by congressional act in 1916.

## CHAPTER THREE

### THE END OF TREATY MAKING

1871 to 1887

Beginning with the first settlements in New England in the 17th century, Indian policy dependent upon treaty negotiations was based on the recognition of the strength and military importance of Indian tribes, especially in the Revolutionary War and the War of 1812. After the latter war, as the immediacy of the threat of foreign invasion diminished, critics of treaty making called for its abolition, arguing that Indian tribes were not independent nations possessing rights of sovereignty--they were subjects of the United States, and Congress has as much right to legislate for the Indians as for the people in the territories.<sup>12</sup> Therefore, critics concluded, Indian affairs should be dealt with through general legislation. However, official policy continued to recognize tribes as sovereign entities worthy of respect as autonomous governmental bodies.

After the Civil War, government officials increasingly adopted the belief that Indian tribes could no longer be regarded as sovereign nations. Instead, Indians "should be regarded as wards of the government, entitled to its fostering care and protection."<sup>13</sup> Humanitarians also called for an end to treaty making, viewing it as a protection of tribal culture that was a barrier to assimilation of the Indian into American society. For some government officials, however, abolishing treaty making was viewed as a punishment for those Indian tribes that allied themselves with the Confederacy during the Civil War.<sup>14</sup>

Treaty making with Indian tribes effectively ended in 1871 because of politics, not policy. The United States House of Representatives resented the power of the United States Senate over Indian relations. This power stemmed from the Senate's constitutional responsibility to ratify all treaties entered into by the United States. In an attempt to equalize this power, the Appropriations Act of March 3, 1871, contained the following clause:

*Provided, That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: Provided, further, That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe.*<sup>15</sup>

After 1871, Indian affairs were handled through agreements, statutes, or executive orders. Tribes were no longer recognized as independent nations; tribal consent was no longer required. However, the agreements, statutes, and orders continued to have legal ramifications similar to those of treaties.<sup>16</sup>

With the tribes now, for the most part, confined to reservations, the federal government began extending its control over the Indians in its care. Administration of Indian affairs was centralized in the Department of the Interior, and a Commissioner of Indian Affairs was appointed. In addition, an Indian agent was assigned to each reservation. The government also established special courts on the reservations to prosecute crimes by Indians against Indians.

With the end of the treaty-making period came a new shift in Indian policy. As more and more Americans poured into the Great Plains, geographically isolating Indians was no longer possible, even on reservations. Therefore, assimilation became the watchword of the new federal Indian policy.

## CHAPTER FOUR

### ALLOTMENT AND ASSIMILATION

1887 to 1928

The confinement of Indians to reservations, with the accompanying dependence on government largesse, resulted in a situation of hopeless poverty. This poverty spurred critics of federal Indian policy to call for reforms not only to alleviate the poverty but to also create a new role for Indians in American society. Moreover, the idea of large tracts of land being excluded from white settlement bred resentment among many non-Indians.

Indian poverty and non-Indians' desire for land spurred the development of a new federal Indian policy: assimilation. The components of this policy were allotment, education, and citizenship. Each component was designed to force Indians to assimilate into white society by breaking up tribal governments, which were viewed as obstacles to the cultural and economic development of Indians.

Within the context of Indian policy, allotment meant the assignment of reservation land to individual Indians. It was believed that allotment would promote an agricultural lifestyle among Indians while opening up more land for white settlement. As early as 1633, Indian lands had been allotted. Early treaties reserved some lands for ownership by individual Indians or families. Tribal ownership (communal) of lands was sometimes converted into ownership with title held by individual tribal members. These early attempts failed as allotted land quickly passed from Indian

allottees into the hands of non-Indian traders and land companies, often by means of fraud.<sup>17</sup>

In 1887, the U.S. Congress passed the Indian General Allotment Act, often referred to as the Dawes Act, which called for all reservation lands to be surveyed and then allotted to individual Indians to farm. The first allotment consisted of 160 acres to each head of household and 40 acres to each minor. This was later amended to 80 acres of agricultural land or 160 acres of grazing land to each Indian.<sup>18</sup> Title to the allotted land was held in trust by the federal government for a period of 25 years. At the end of the trust period, the Indian allottee was given free and clear title to the land. However, at that time, the land became subject to the laws of the state in which the land was located, including taxation laws. Surplus lands on the reservations remaining after allotment were purchased by the United States, and the funds were held in trust for the sole use of the tribes. Pressure from non-Indians eventually led the government to open up the surplus land on some reservations to white settlement. It was hoped that the white farmers would serve as role models for their Indian neighbors.

The policy of allotment was a dismal failure. Because Indians were generally unfamiliar with the laws and requirements of land ownership, many allotments passed into non-Indian hands, thus defeating the intention of turning Indians into farmers. During the trust period, Indians leased their lands to non-Indians, often with terms unfavorable to the Indians. Some federal agents encouraged this leasing because Indians only grazed horses, which was viewed as an unproductive use of the land.<sup>19</sup> After the trust period ended, lands were lost because of nonpayment of

taxes or were sold to satisfy debts or to acquire money to survive. From the passage of the Dawes Act to 1934 when allotment ended, 90 million acres of Indian land were lost. Twenty-seven million acres passed from Indian allottees to non-Indians through sale; an additional 60 million acres were ceded outright or sold to non-Indians as surplus lands.<sup>20</sup> Allotment resulted in separating Indians from their land without accomplishing the benign purposes intended by its supporters.

Allotment occurred on six of Montana's Indian reservations. However, with the exception of the Crow Reservation, the lands were not allotted until after 1900. Surplus lands on the Fort Peck and Flathead Reservations were opened up to non-Indian settlement: the remaining reservations were not opened. However, some allotted land on the Crow and Blackfeet Reservation did eventually pass into non-Indian ownership. Land was never allotted on the Rocky Boy's Reservation.
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In addition to allotting Indian lands, the Dawes Act also conferred citizenship on Indians receiving allotments and on Indians living apart from their tribes and adopting "habits of civilized life." In 1924, citizenship was extended to all Indians born within the United States as a reward for participating in World War I. Citizenship did not alter the status of Indians as wards of the federal government or as tribal members. Indians were also made citizens of the state in which they resided. However, many states continued to deny Indians the right to vote because they were not taxed and they were under the guardianship of the federal government.

The education of Indian youth in the non-Indian culture was also seen as an important tool in the assimilation process. It was believed that if

Indian children would adopt non-Indian ways, then within a generation, assimilation would be completed. The first Indian schools supported by the federal government were mission schools operated by various religious denominations. In the 1870s, the government began operating off-reservation boarding schools in the belief that removal from tribal influences would speed the assimilation process. That philosophy changed by the turn of the century to one of "bringing civilization" to the Indians through on-reservation day schools. By 1917, the federal government concluded that public schools offered the best opportunity for the assimilation of Indian children. However, many public schools refused to admit Indian children because their parents did not pay taxes to support the schools. The federal government agreed to pay tuition to allow Indian children to attend public schools.

The whole Indian education system, from mission schools to public schools, facilitated the loss of the traditional native lifestyle and did irreparable damage to Indian culture. Indian children were taught that their culture, the culture of their parents and grandparents, was inferior. As a result, tribal traditions and languages were lost for many, many years.

Although federal Indian policy would continue to take various twists and turns over the next 40 years, assimilation would remain a dominant theme. America as a melting pot of cultures is a strong image, and many people believe that Indian culture should be blended into the mixture.

## CHAPTER FIVE

### TRIBAL REORGANIZATION AND PRESERVATION

1928-1942

In the late 1920s, the Commissioner of Indian Affairs commissioned the Institute for Government Research, a nongovernmental agency, to examine the administration of federal Indian policy and its impact on Indian life. The Meriam Report, issued in 1928, documented the failure of federal Indian policy during the allotment period. The report highlighted the deplorable living conditions of Indians on reservations. Poverty, disease, suffering, and discontent were common. The report also criticized the inefficient, paternalistic administration of Indian policy that neither encouraged nor supported Indian self-sufficiency. The Meriam Report reflected assimilationist attitudes but gave greater respect to Indian culture. It defined the goal of Indian policy as the development of all that is good in Indian culture.

The Meriam Report served as the primary catalyst for the change in federal Indian policy that occurred in the 1930s. The Commissioner of Indian Affairs began implementing many of the report's recommendations, including hiring more Indians to work in the Bureau of Indian Affairs (BIA), upgrading the qualifications of BIA personnel in terms of education and expertise, emphasizing education in local day schools and not in distant boarding schools, and encouraging respect for Indian culture. Legislative changes also occurred. The Leavitt Act was passed in 1932, discharging the debts of Indians for the construction of reservation irrigation projects not requested by the tribes or beneficial to them. The

Johnson-O'Malley Act of 1934 allowed the Secretary of the Interior, using federal funds and federal facilities, to contract with states to provide a full range of Services to Indians. Services included education, health care, social welfare, and agricultural assistance. Later, contractual arrangements were extended to public and private institutions, corporations, and agencies and political subdivisions of the states.

The culmination of this change in federal policy was the passage in 1934 of the Indian Reorganization Act (IRA), also known as the Wheeler-Howard Act. The purpose of the IRA was to encourage economic development, self-determination, cultural plurality, and a revival of tribalism. Although eventual assimilation was still considered the goal of Indian policy, the IRA was to provide a mechanism for tribes as governmental units to interact with and adapt to modern society, rather than force assimilation of individual Indians. The IRA was based on the assumption that tribes should be in existence and that their land base should be protected. A major objective of the IRA was to restrict the pervasive federal administrative power but to continue federal supervisory authority.

The IRA ended the practice of allotment and indefinitely extended the trust period for those allotments still in trust. The IRA, however, did not specifically repeal the General Allotment Act. Surplus lands on a reservation that had remained unsold were restored to tribal ownership; additional lands were also acquired for tribes. These additional lands either became new reservations or were attached to existing reservations.

The IRA authorized tribes to adopt constitutions and bylaws and to organize as federally chartered, self-governing corporations, subject to tribal ratification. The constitutions and charters were also subject to approval by the Secretary of the Interior. Tribes were free to choose whether or not they wished to organize under the IRA. A revolving fund of \$10 million was established to make loans to incorporated tribes.

The IRA also established an employment preference for Indians within the BIA. This gave Indians some influence in at least administering federal Indian policy, although their role in formulating policy was still negligible.

Implementation of the IRA resulted in some very tangible benefits for Indian tribes. It halted the further rapid erosion of the tribal land base. Federal funds were spent for on-reservation health facilities, roads, irrigation systems, housing, and schools. The IRA's success in encouraging tribal self-government was more limited. The model constitution suggested by the federal authorities was based on an Anglo-American model of government that was not necessarily compatible with the traditional methods of tribal government. In addition, Congress made the mistake of regarding Indians as a single homogenous group; the model constitution did not take into consideration differing tribal needs and conditions. Despite all of this, the majority of the tribes elected to organize under the IRA. For these tribes, it offered stability, a revival of tribal government, tribal law and order, and an improved economic position.

For the remainder of the 1930s, Indian tribes experienced a revival. However, the onset of World War II diverted government attention to other problems, and Indian economic well-being once again began to decline.

## CHAPTER SIX

### TERMINATION AND RELOCATION

1942 to 1961

The movement toward the dissolution of tribal governments and reservations, often referred to as "termination", began in the late 1930s with criticism of the policies of the IRA. The criticism was of two types: ideological and economic. The assimilations believed that the IRA delayed the absorption of Indians into the dominant white culture, while others maintained that the IRA did not provide tribes with sufficient means to achieve self-determination. Business interests were critical of the new reservation economic development programs because they threatened the loss of the use of Indian land and resources by non-Indians. There were also personal differences between the Commissioner of Indian Affairs and members of Congress during this period. These differences resulted in repeated legislative attacks on the IRA and the BIA.<sup>21</sup>

However, it was America's entrance into World War II that signaled the end of the progress made by tribes as a result of the IRA. The BIA saw its budget increasingly cut and its personnel lost to the war effort. As the federal government focused its attention on the international situation, Indian affairs were largely ignored. In fact, BIA operations were moved out of Washington, D.C., to Chicago for the duration of the war.

With the conclusion of the war, the demand for the rapid assimilation of Indians grew. The friction between the Office of the Commissioner of Indian Affairs and Congress continued. There were legislative attempts to

repeal the IRA. When these attempts failed, the budget of the BIA was cut, thus hampering the Bureau's ability to maintain IRA policies and programs. Eventually the assimilationists succeeded in changing the direction of the BIA. The emphasis on tribal development was shelved, and the focus was shifted to the formulation of programs that would result in the eventual withdrawal of the federal government from Indian Affairs.

In 1953, Congress passed House Concurrent Resolution No. 108, which established termination as the formal policy of the federal government. The resolution called for the elimination of all federal benefits and services to certain Indian tribes and the forced dissolution of their governments and reservations. Actual termination was accomplished through the passage of individual congressional acts. Over the next few years, more than 100 tribes lost federal assistance and saw their governments dissolved and their tribal resources liquidated and redistributed to individual members. Other legislative acts applied generally to all tribes. These acts did not specifically terminate tribes but did alter the federal-tribal relationship. For example, responsibility for Indian education was transferred from the federal government to the states and health care responsibilities were transferred from the BIA to the federal Public Health Service.

The most controversial act passed during this period was Public Law 280, which extended state civil and criminal jurisdiction to include Indian country in five states and in other states if those states wished it. Tribal consent to state jurisdiction was not required. Public Law 280, although it did not include taxation, treaty hunting and fishing rights, or general regulatory power, gave states power over Indians and diminished tribal

authority. The law was viewed as a compromise between termination and continuation of relative immunity of tribes from state jurisdiction. However, it satisfied no one. Tribes resented the loss of authority and the lack of consent; states resented the inability to tax tribal properties to pay for the additional enforcement expenses. Eventually, Congress passed legislation requiring tribal consent before a state could assume jurisdiction. This effectively ended any further application of Public Law 280.<sup>22</sup>

The end of World War II also saw the return of many Indian veterans and defense industry workers to their reservations where they found insufficient land resources, negligible industrial development, and few prospects for employment. As a solution, the BIA instituted a relocation program. Indians were offered financial assistance to leave the reservations and seek work in various metropolitan centers. Relocation was viewed as another step in the road to termination and assimilation. Once Indians were relocated, special federal assistance that was available to them on the reservations was ended. Relocation proved very difficult due to the resilience of Indian culture and strength of family ties. Also, the Indians who did relocate received no help in learning to live in an urban environment. The general effect of the program was to create in the cities a population of unemployed Indians who suffered the usual problems of the urban poor coupled with the added trauma of dislocation. The relocation program was eventually abandoned in favor of off-reservation employment programs and the development of alternative employment opportunities on or near reservations.

Generally, the intentions of the supporters of the termination policy were benevolent, but the actual results were tragic. It was hoped that termination would free Indians from BIA domination and entitle them to the same privileges and responsibilities as those given to other United States citizens. For those Indians whose tribes were terminated, the money they received from either the sale of their lands or the liquidation of tribal resources was quickly dissipated. Indian lands passed rapidly from Indian ownership to non-Indian ownership. Tribes were plunged into even deeper economic problems than they had previously endured. While the percentage of tribes that were actually terminated was small, the threat of termination cast a pall over the futures of most tribes. Today, the threat is much diminished but still exists because the policy of termination has never been formally disavowed by Congress.

## CHAPTER SEVEN

### SELF-DETERMINATION

#### 1961 to the Present

The growing concern for civil rights in the late 1950s and early 1960s was reflected in the changing attitudes toward Indian affairs. The evolution of federal Indian policy mirrored the growing national awareness of the plight of ethnic minorities and the support of a sizeable part of the public for reform causes. By the late 1950s, there was waning congressional support for termination and withdrawal of federal services, so the policy of termination was abandoned. Consequently, the federal government gradually returned to the basic philosophies of the Indian reorganization period: reaffirmation of the status of tribes as permanent, self-governing institutions and the continuing importance of the trust relationship between the federal government and the tribes.

The new federal Indian policy that evolved during this period was described as self-determination. This policy of self-determination was formally enunciated in President Richard Nixon's Special Message to Congress on July 8, 1970. The new policy called for Indian control over the planning and implementation of Indian programs, tribal management of tribal affairs with a maximum degree of autonomy, recognition of tribes as the basic governmental units of Indian policy, and promotion of the practical exercise of the inherent sovereign powers possessed by tribes.

In order to implement this new policy, Congress passed numerous laws fostering Indian self-determination and economic development. The Indian

Business Development Fund stimulated and increased Indian entrepreneurship and employment through grants to Indians and tribes to establish Indian-owned businesses. The Indian Financing Act of 1974 created a revolving fund to promote Indian economic development. The Indian Self-Determination and Education Assistance Act allowed tribes to administer federal programs on their reservations and also allowed Indian communities to contract to administer BIA schools. The Indian Mineral Development Act of 1982 allowed tribes to enter into joint-venture agreements with mineral developers. The Indian Tribal Government Tax Status Act of 1982 gave tribes many tax advantages enjoyed by states. The Indian Gaming Regulatory Act encourages tribes to raise revenue and promote economic development through gambling. The tribal Federal Jurisdiction Act permitted Indian tribes access to federal courts for cases in which the United States Attorney had declined to bring an action. This act allowed tribes to take independent steps to protect and assert constitutional, statutory, and treaty rights.

The policy of promoting tribal self-determination has been reaffirmed by every president since Nixon. In addition, presidents have argued that the policy should be pursued in the future, but the future of federal Indian policy is difficult to predict.

## CHAPTER EIGHT

### THE FUTURE

Current federal Indian policy is based on a model of continuing pluralism and a recognition that tribes are here to stay for the indefinite future. Federal policy has ceased to discriminate against individual Indians and now seeks to strengthen tribes. However, nothing in the history of federal Indian policy justifies confidence in the continuation of the current federal Indian policy of self-determination. Certain groups and individuals oppose tribal assertion of rights and are aggressively seeking to abolish those rights. However, the increasing sophistication of tribal governments and the increasing assertion of treaty and statutory rights by Indian tribes, coupled with growing support for tribal sovereignty from non-Indians, will make changes to the self-determination policy difficult to achieve.

## ENDNOTES

1. Harold L. Hodgkinson, The Demographics of American Indians; One Percent of the People; Fifty Percent of the Diversity (Washington, D.C.: Center for Democratic Policy, 1990), p. 3.
2. Stephen L. Pevar, The Rights of Indians and Tribes (New York: American Civil Liberties Union, 1992) p. 1.
3. Ibid.
4. Rennard Strickland, ed., Felix S. Cohen's Handbook of Federal Indian Law, 1982 ed., (Charlottesville, Virginia: The Michie Company, 1982), p. 53.
5. Ibid., p. 52.
6. Ibid., p. 63.
7. Ibid., p. 60.
8. Ibid., p. 70.
9. William C. Canby, Jr., American Indian Law, Nutshell Series (St. Paul: West Publishing Co., 1981), p. 16.
10. Handbook of Federal Indian Law, p. 92.
11. American Indian Law, p. 17.
12. Francis Paul Prucha, American Indian Policy in the Formative Years (Cambridge, Massachusetts: Harvard University Press, 1962), p. 234.
13. Handbook of Federal Indian Law, p. 106.
14. Ibid., p. 105.
15. Ibid., p. 107.
16. Ibid., p. 127.
17. Ibid., p. 130.
18. Ibid., p. 133.
19. Kenneth L. Weaver, ed., Reflections on Tribal Governance in Montana (Bozeman, Montana: Local Government Center, Montana State University, 1990), p. 10.
20. Handbook of Federal Indian Law, p. 138.

21. Ibid., p. 154.
22. American Indian Law, p. 30.